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January 23, 2012

***Via Certified Mail -  
Return Receipt Requested***

Head Of Operations  
County Sanitation District No. 2-3 of Santa Clara  
20833 Stevens Creek Blvd., Suite 104  
Cupertino, CA 95014

**Re: Notice of Violations and Intent to File Suit Under the Clean Water Act**

Dear Head of Operations:

**NOTICE**

The Clean Water Act ("CWA" or the "Act") § 505(b) requires that 60 days prior to the initiation of a civil action under CWA § 505(a), [33 U.S.C. § 1365(a),] a citizen must give notice of the intent to sue to the alleged violator, the Environmental Protection Agency ("EPA") and the State in which the violations occur.

This letter serves as notice on behalf of Northern California River Watch ("River Watch") that River Watch hereby places County Sanitation District No. 2-3 of Santa Clara, ("the District") on notice that following the expiration of 60 days from the date of this Notice, River Watch intends to bring suit in the United States District Court against the District for continuing violations of an effluent standard or limitation, permit condition or requirement, a Federal or State Order or Plan issued under the CWA, in particular, but not limited to CWA § 505(a)(1), [33 U.S.C. § 1365(a)(1),] the Code of Federal Regulations, and the Regional Water Quality Control Board's Basin Plan, as exemplified by the incidents of non-compliance with the CWA by the District, identified and outlined below.

**INTRODUCTION**

The CWA prohibits any discharge of pollutants from a point source to waters of the United States except as authorized under an National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to CWA § 402, which allows the discharge of designated pollutants at certain levels subject to certain conditions. The effluent discharge standards or limitations specified in a NPDES permit define the scope of the authorized

exception to the 33 U.S.C. § 1311(a) prohibition, such that violation of a permit limit places a polluter in violation of 33 U.S.C. § 1311(a) and thus in violation of the CWA. Private parties may bring citizens' suits pursuant to 33 U.S.C. § 1365 to enforce effluent standards or limitations, which are defined as including violations of 33 U.S.C. § 1311(a) and 33 U.S.C. § 1365(f)(1).

The CWA provides that authority to administer the NPDES permitting system in any given state or region can be delegated by the EPA to a state or to a regional regulatory agency, provided that the applicable state or regional regulatory scheme under which the local agency operates, satisfies certain criteria. See 33 U.S.C. § 1342(b). In California, the EPA has granted authorization to a state regulatory apparatus comprised of the State Water Resources Control Board (SWRCB) and several subsidiary regional water quality control boards, to issue NPDES permits. The entity responsible for issuing NPDES permits and otherwise regulating discharges in the region at issue in this Notice is the Regional Water Quality Control Board, San Francisco Bay Region (RWQCB).

The District is located within 2 unincorporated areas that are surrounded by the City of San Jose. The District is governed by the Santa Clara County Board of Supervisors. The District provides sanitary sewer services to approximately 8 square miles, with approximately 90 miles of sewer lines and 7,000 connections. Wastewater collected within the District flows to the City of San Jose's treatment facilities for treatment and disposal. The District contracts with the City of San Jose and pays its proportionate cost for use of the city-owned sewer lines between the District and the treatment plant, and for the treatment and disposal of waste. The District does not have any employees of its own. Management services are provided by contract with an engineering consulting firm. Sanitary sewer maintenance work is provided by contract with service providers.

The average daily flow is approximately 1.5 mgd. The District has stated that the existing system has the capacity to accommodate growth and infill development within the existing boundaries. The District provides services to residential, commercial and industrial customers.

The District has a history of sewer system overflows (SSOs) from its aging sewer lines. As recorded in the SWRCB, California Integrated Water Quality System (CIWQS) Interactive SSO Reports, the District's collection system has experienced 88 SSOs between June 2007 and November 2011, with a combined volume of 139,628 gallons - 102,655 gallons of which reached surface waters.

For example, on April 15, 2011 there was a spill of reported volume of 4,500 gallons of untreated waste water from a District-owned sewer main at 10793 Miguelita Road in San Jose, all of which discharged to a nearby surface water. On September 3, 2011 there was a spill of reported volume of 6,000 gallons of untreated waste water from a District-owned sewer main at 10251 Claudia Drive in San Jose, 5,900 gallons of which discharged to a nearby surface water.

Structural defects in the District's collection system, which allow inflow and infiltration (I/I) of rainwater and groundwater into the sewer lines, result in a buildup of pressure which causes SSOs. Overflows caused by blockages and I/I result in the discharge of raw sewage into gutters, canals and storm drains which are connected to adjacent surface waters such as Coyote Creek, Guadalupe River and South San Francisco Bay, all waters of



the United States. In addition to surface overflows which discharge overland into surface waters, underground leakages (exfiltration) caused by pipeline cracks and other structural defects result in discharges to adjacent surface waters via underground hydrological connections.

Studies tracing human markers specific to the human digestive system in surface waters adjacent to defective sewer lines have verified the contamination of the adjacent waters with untreated sewage.<sup>1</sup> River Watch alleges that such discharges are continuous wherever aging, damaged, structurally defective sewer lines in the District's collection system are located adjacent to surface waters. Surface waters and groundwater become contaminated with fecal coliform, exposing people to human pathogens. The District's chronic collection system failures pose a substantial threat to public health.

Any point source discharge of sewage effluent to waters of the United States must comply with technology-based, secondary treatment standards at a minimum, and any more stringent requirements necessary to meet applicable water quality standards and other requirements. Hence, the unpermitted discharge of wastewater from a sanitary sewer system to waters of the United States is illegal under the CWA. In addition, the Basin Plan adopted by the RWQCB contains discharge prohibitions which apply to the discharge of untreated or partially treated wastewater.

Discharges by the District as described herein constitute a nuisance. These discharges are either: injurious to health; indecent or offensive to the senses; or, an obstruction to the free use of property; and, occur during, or as a result of, the transportation, disposal or treatment of wastes.

The District's collection system operations are not regulated under a NPDES Permit, but are currently regulated under the Statewide General Waste Discharge Requirements For Sanitary Sewer Systems, Order No. 2006-003-DWQ ("Statewide WDR") adopted on May 2, 2006.

The District's illegal discharge of untreated wastewater is a significant contribution to the degradation of South San Francisco Bay and tributary waters such as Coyote Creek, with serious adverse effects on the beneficial uses of these waters. River Watch members residing in the area have a vital interest in bringing the District's operation of its collection system into compliance with the CWA.

### **NOTICE REQUIREMENTS**

The CWA requires that any Notice regarding an alleged violation of an effluent standard or limitation or of an order with respect thereto, shall include sufficient information to permit the recipient to identify the following:

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<sup>1</sup>See the July, 2008 Report of the Human Marker Study conducted by Dr. Michael L. Johnson, U.C. Davis water quality expert, performed for the City of Ukiah, finding the presence of human derived bacteria in two creeks adjacent to defective sewer lines.

1. *The specific standard, limitation, or order alleged to have been violated.*

River Watch has identified discharges of raw sewage from the District's collection system to surface waters in violation of the prohibition of the CWA with regard to discharging a pollutant from a point source to waters of the United States without a NPDES permit, CWA § 301(a), 33 U.S.C. § 1311(a) and 33 U.S.C. § 1365(f).

2. *The activity alleged to constitute a violation.*

River Watch has set forth narratives below describing the discharges of raw sewage to surface waters as the activities leading to violations, and describing with particularity specific incidents referenced in the SWRCB's CIWQS SSO Public Reports and other public documents in the District's possession or otherwise available to the District, and incorporates by reference records cited below from which descriptions of specific incidents were obtained.

3. *The person or persons responsible for the alleged violation.*

The entity responsible for the alleged violations is the County Sanitation District No. 2-3 of Santa Clara, identified throughout this Notice as the "District".

4. *The location of the alleged violation.*

The location or locations of the various violations are identified in records created and/or maintained by or for the District which relate to the District's sewage collection system as further described in this Notice.

5. *The date or dates of violation or a reasonable range of dates during which the alleged activity occurred.*

River Watch has examined records of the RWQCB as to the District for the period from January 9, 2007 to January 9, 2012, therefore, the range of dates covered by this Notice is January 9, 2007 to January 9, 2012. River Watch will from time to time update this Notice to include all violations which occur after the range of dates currently covered by this Notice.

6. *The full name, address, and telephone number of the person giving notice.*

The entity giving notice is Northern California River Watch, P.O. Box 817, Sebastopol, CA 95472, Telephone/Facsimile 707-824-4372, E-mail US@ncriverwatch.org, referred to throughout this Notice as "River Watch". River Watch is a non-profit corporation organized under the laws of the State of California, dedicated to the protection and enhancement of the waters of the State of California including all rivers, creeks, streams and groundwater in Northern California.

## **VIOLATIONS**

River Watch contends that from January 9, 2007 to January 9, 2012, the District has violated the CWA, the Basin Plan and the Code of Federal Regulations for discharging pollutants to waters of the United States from its collection systems without a NPDES permit. The below-listed violations are reported by the RWQCB staff, and evidenced by the



SWRCB's CIWQS SSO Reporting Program Database Records. Furthermore, River Watch contends these violations are continuing.

<u>Violations</u>	<u>Description</u>
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- |             |  |
|-------------|--|
| <b>1800</b> | <b>Collection system overflows caused by underground exfiltration.</b> This is an event in which untreated sewage is discharged from the collection system prior to the reaching the wastewater treatment plant. Underground discharges are alleged to have been continuous throughout the 5 year period from January 9, 2007 to January 9, 2012. Evidence to support the allegation of underground discharge of raw sewage exists in the District's own mass balance data regarding the number of connections in the service area, estimates of average daily volume of wastewater per connection, influent flow volumes to the San Jose treatment plant reported in the District's records, video inspection of the collection system, and testing of waterways adjacent to sewer lines, creeks, wetlands and the South Bay for nutrients, pathogens and other constituents indicating sewage contamination, such as caffeine. |
| <b>125</b>  | <b>SSOs.</b> As evidenced in the SWRCB's CIWQS Interactive SSO Reports, including the reports discussed above. Also, unrecorded surface overflows witnessed by local residents.  |

#### **REMEDIAL MEASURES REQUESTED**

River Watch believes the following remedial measures are necessary to bring the District into compliance with the CWA and the Basin Plan, and reflect the biological impacts of the District's ongoing non-compliance with the CWA:

1. A reduction of collection system I/I through an aggressive collection system management, operation and maintenance ("CMOM") program, with clear time lines for prioritized repairs. The CMOM program shall include:
  - a. The amendment of the Risk Assessment Plan in the District's Sewage System Management Plan, to specify that defective sewer lines located within 150 feet of surface waters, including drainage channels and creeks, will be given a higher priority for repair and/or replacement than other sewer lines with comparable defects located more than 150 feet of surface waters. Said prioritization will be consistent with information provided by the District's Flow Monitoring and Inflow/Infiltration Study completed in June 2009. The District's CCTV Program shall prioritize the televising of sewer lines identified by the Flow Monitoring and Inflow/Infiltration Study completed in 2009 as necessary to assess the exact location of I/I sources.
  - b. The provision of funding in the District's Capital Improvements Plan to CCTV all gravity sewer lines every 10 years, except for lines CCTV'd within the prior 10 years, and lines constructed, replaced or repaired within the prior 20 years.

2. A mandatory private sewer lateral inspection and repair program triggered by any of the following events:
  - a. Transfer of ownership of the property if no inspection/replacement of the sewer lateral occurred within 20 years prior to the transfer.
  - b. The occurrence of 2 or more SSOs caused by the private sewer lateral within 2 years.
  - c. A change of the use of the structure served (1) from residential to non-residential uses, (2) to a non-residential use which will result in a higher flow than the current non-residential use, and (3) non-residential uses where the structure served has been vacant/unoccupied for more than 3 years.
  - d. Upon replacement or repair of any part of the sewer lateral.
  - e. Upon issuance of a building permit with a valuation of \$25,000.00 or more.
  - f. Upon significant repair or replacement of the main sewer line to which the lateral is attached.
3. Compliance with monitoring and reporting requirements, especially regarding all overflows which reach storm drains or discharge directly to state waters, including a more detailed account of SSOs and remedial actions, with sufficient information to verify and document SSO start times, durations, volumes, volumes recovered, volumes reaching surface waters and remedial actions including whether any chemical agents were used.
4. Creation of web site capacity to track information regarding SSOs. In the alternative, a link from the District's web site to the SWRCB's CIWQS SSO Public Reports. Provision of notification to all customers and other members of the public of the existence of the web based program, including a commitment to respond to private parties submitting overflow reports.
5. Performance of human marker sampling on creeks, rivers, wetlands and areas of South San Francisco Bay and its tributaries adjacent to sewer lines, to test for sewage contamination from underground exfiltration.

#### **CONTACT INFORMATION**

River Watch has retained legal counsel to with respect to the issues raised and violations of RCRA as alleged in this Notice. All communications should be addressed to:

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## CONCLUSION

The violations as set forth in this Notice effect the health and enjoyment of members of River Watch who reside and recreate in the affected watershed communities. Members of River Watch use the affected watershed for domestic water supply, agricultural water supply, recreation, sports, fishing, swimming, shell fish harvesting, hiking, photography, nature walks and the like. The members' health, use and enjoyment of this natural resource is specifically impaired by the District's alleged violations of the CWA as set forth in herein.

River Watch believes this Notice sufficiently states grounds for filing suit. At the close of the 60-day notice period or shortly thereafter River Watch intends to file a citizen's suit under CWA § 505(a) against the District for the violations alleged in this Notice.

During the 60-day notice period, however, River Watch is willing to discuss effective remedies for the violations referenced in this Notice. If the District wishes to pursue such discussions in the absence of litigation, it is encouraged to initiate such discussions immediately so that the parties might be on track to resolving the issues raised in this Notice before the end of the notice period. River Watch will not delay the filing of a lawsuit if discussions have not commenced by the time the 60-day notice period ends

Very truly yours,



Jerry Bernhaut

JB:lhbm

cc: Santa Clara County Board of Supervisors  
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